IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.Rev.Pet.No. 565 of 1999(J)

CRA 139 OF 1996, SESSIONS COURT, THRISSUR
C.C. NO. 342 OF 1995, JUDL. MAGISTRATE OF
FIRST CLASS COURT-I, THRISSUR

REVN. PETITIONER - APPELLANT - ACCSUED:

JOHNSON, S/O. DEVASSY, KAKKASSERY
HOUSE, ARANATTUKARA, THRISSUR
DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENT - RESPONDENT - COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI C.K. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

==========

CRL. R.P. NO. 565 OF 1999

==========

Dated this the 31st day of January, 2007

O R D E R

Accused in C.C. No.342 of 1995 on the file of the Judicial First Class Magistrate No.I, Thrissur is the revision petitioner. Petitioner was found guilty of an offence punishable under Section 379 IPC, convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-. In default of payment of fine, he was directed to undergo simple imprisonment for another two months. Set off was also allowed. Criminal Appeal No.139 of 1996 filed by the revision petitioner before the Sessions Court, Thrissur, was also dismissed. Hence this Criminal Revision Petition.

2. Prosecution case in brief was that at about 6.00 a.m. on 16.3.1995 P.Ws.1 and 2 were returning home after worshiping in the Vadakkunnathan temple. When they reached the place of occurrence, revision petitioner suddenly came there and snatched the gold chain worn by P.W.1 with the intention of committing theft of the same and make good his escape. P.W.1 along with

her husband went to the police station and gave Exhibit P1 first information statement at about 6.30 a.m. on that day itself. A case was registered and the Sub Inspector of Police had investigated the same. It was the further prosecution case that at about 11.00 a.m. on that day itself, P.W.5 found the revision petitioner standing in a suspicious circumstance. Revision petitioner was intercepted and questioned. He confessed having committed the offence in this case. So he was arrested and subsequently released on bail. After investigation, P.W.5 filed final report. When the accused appeared before the learned Magistrate, copies of relevant documents were furnished to him. Particulars of the offence was read over and explained to him. He understood the same and pleaded not guilty. On the side of prosecution P.Ws.1 to 6 were examined, Exhibits P1 to P4 proved and marked and M.O.1 identified. After prosecution evidence was over, revision petitioner was questioned under Section 313 Criminal Procedure Code. He denied all incriminating circumstances brought out against him. But no defence evidence was adduced. Learned Magistrate found the revision petitioner

guilty of the offence charged, convicted and sentenced as aforesaid. Criminal appeal filed by him was also dismissed. Hence this Criminal Revision Petition.

3. Learned counsel appearing for the petitioner has argued that the entire procedure followed by the learned Magistrate is illegal. It was argued that there were very serious infirmities in the investigation. It is argued that the independent witness examined in this case gave evidence to the effect that revision petitioner was caught red handed from the place of occurrence itself. But according to investigating officer revision petitioner was arrested only at 11.00 a.m. on 16.3.1995. According to the investigating officer he took over investigation at 8.00 p.m. only but arrested the accused at 11.00 a.m. on that day. Charge framed by the court bears the date 15.5.1995. But going by the proceedings paper it is highly interesting to note that no charge was framed on that day. As per the proceedings paper on 15.5.1995 copies of the relevant documents were furnished to accused and case was adjourned for framing charge. It is also interesting to note that de facto

complainant was examined only on 5.7.1995. On that day she gave evidence to the effect that she was unable to identify the person who committed theft of her gold chain. She was again examined on 11.9.2995. It is very interesting to note that on that day also she could not identify the revision petitioner as the person who committed the theft. When she confronted with the earlier statement given under oath she deposed that that was a mistake. She also submitted hat she went to the police station only at 9.00 a.m. for giving the complaint. But Exhibit P1(a) first information report is seen registered at 6.30 a.m. on 16.3.1995 and it reached the court at 4.00 p.m. on that day itself. P.W.1, de facto complainant, had admitted that on that day itself police came to her house with the revision petitioner and had shown the gold ornament. P.W.2 was a person stated to be accompanied P.W.1 from the temple. She deposed that people in the locality who rushed to the place of occurrence caught hold of the revision petitioner red handed at the place of occurrence itself. She further deposed that revision petitioner was taken to the house of de facto complainant by the police. Two

independent witnesses were examined to prove the prosecution case. P.W.3 did not support the prosecution case, but he was not declared hostile. P.W.6 was declared hostile. So their evidence is of no help to the prosecution. P.W.4 registered the first information report. P.W. 5 also admitted that after arrest of the revision petitioner he took the accused along with the stolen gold ornament to the house of P.W.1, shown the gold ornament to the complainant and witnesses. He also deposed that at the time of arrest of the accused he sent for P.W.1 and accused was shown to her. So material on record shows that accused was shown to the complainant and witnesses.

4. In **Mohd. Iqbal M.Shaikh v. State of Maharashtra** (1998) 4 SCC 494) the Apex Court had held that where an accused is shown to a witness during the course of investigation, the identification of the accused in court is of no consequence and cannot form the basis for conviction. Evidence of P.Ws.1 and 2 is contrary and cannot be believed. It is true that material on record shows that M.O.1 is a gold chain belonging to

P.W.1. But that alone is not sufficient to convict the revision petitioner. There are serious infirmities in the investigation and also the procedure followed by the Magistrate. So the revision petitioner is entitled to acquittal.

In the result, this Criminal Revision Petition is allowed. The conviction and sentence imposed by courts below are set aside. He is found not guilty of the offence charged under Section 379 IPC and acquitted. He is set at liberty. The bail bond executed by the revision petitioner shall stand cancelled.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

==========

CRL. R.P. NO. 565 OF 1999

==========

O R D E R

31ST JANUARY, 2007